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09/746,880	12/22/2000	David John Tyrrell	16,496	9383

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[REDACTED] EXAMINER

WEBB, JAMISUE A

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**BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES**

Paper No. 23

Application Number: 09/746,880
Filing Date: December 22, 2000
Appellant(s): TYRRELL ET AL.

Alyssa A Dudkowski
For Appellant

EXAMINER'S ANSWER

This is in response to the appeal brief filed February 20, 2003.

(1) *Real Party in Interest*

A statement identifying the real party in interest is contained in the brief.

(2) *Related Appeals and Interferences*

A statement identifying the related appeals and interferences which will directly affect or be directly affected by or have a bearing on the decision in the pending appeal is contained in the brief.

(3) *Status of Claims*

The statement of the status of the claims contained in the brief is correct.

(4) *Status of Amendments After Final*

The appellant's statement of the status of amendments after final rejection contained in the brief is correct.

(5) *Summary of Invention*

The summary of invention contained in the brief is correct.

(6) *Issues*

The appellant's statement of the issues in the brief is correct.

(7) *Grouping of Claims*

Appellant's brief includes a statement that claims 1-5, 8-15, 20-29, 32-35, 40, 41, 43, 45-47, and 49-56 do not stand or fall together and provides reasons as set forth in 37 CFR 1.192(c)(7) and (c)(8).

(8) *ClaimsAppealed*

The copy of the appealed claims contained in the Appendix to the brief is correct.

(9) Prior Art of Record

6,149,934	KRZYSIK ET AL.	11-2000
6,294,186	BEERSE ET AL.	9-2001

(10) Grounds of Rejection

The following ground(s) of rejection are applicable to the appealed claims:

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

Claims 1-5, 8-15, 20-29, 32-35, 40, 41, 43, 45-47 and 49-56 are rejected under 35 U.S.C. 103(a) as being unpatentable over Krzysik et al. (6,149,934) in view of Beerse et al. (6,294,186).

With respect to Claim 1, 5, 8, 10, 11, 14, 15, 20, 25, 26, 29, 34, 35, 40, 47, 49, 50, 52 and 53: Krzysik discloses the use of an absorbent article (20) with a topsheet, backsheet and core located there between (See Figure 1). Krzysik discloses the use of a lotioned topsheet to where

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the lotion composition is melted, applied to the topsheet and then cooled (column 13, line 64 to column 14, line 3). Krzysik disclose the composition comprising 5-95% emollient (see abstract), 0.1-25% of a viscosity enhancer (see abstract), and 5-95% of a wax, which can be a natural oil such as hydrogenated cottonseed oil (abstract and column 10, line 24).

Krzysik, however fails to disclose the composition comprising a sterol and a decoupling agent. Beerse discloses the use of a lotion composition that can be used on diapers (column 9, lines 12-13) is based on an emollient and contains about 0.1-10% of a decoupling polymer such as polysaccharides or polyacrylamides (column 36, line 51 to column 37, line 46), a thickening agent such as a clay (column 11, line 24), and a skin moisturizer such as the sterol cholesterol and is present from 0.1 –20% (column 10, line 43 to column 11, line 16). It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the composition of Krzysik to include the decoupling agent, the thickening agent and the skin moisturizing agent of Beerse, in order to thicken the skin care composition to improve the moisturizing effect of the composition (see Beerse, column 10).

With respect to Claims 2, 22, 41, and 55: See Krzysik column 12, lines 42-58.

With respect to Claims 3, 27 and 45: See Krzysik column 9, lines 45-50.

With respect to Claims 4, 28 and 46: See Krzysik column 10, lines 48-67.

With respect to Claim 9: See Krzysik column 10, lines 19-33.

With respect to Claims 12, 13, 32, 33 and 51: Krzysik discloses the use of a rheology modifier such as silica (column 10, line 60 and column 11, lines 1-5).

With respect to Claims 21 and 54: See Krzysik column 12, lines 29-34.

With respect to Claims 23 and 56: See Krzysik column 12, line 66 to column 13 line 2.

With respect to Claim 24: See Krzysik column 13, lines 42-55.

With respect to Claim 43: See Krzysik column 13, line 59.

(11) Response to Argument

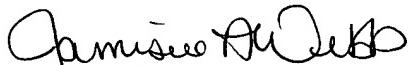
With respect to Applicant's arguments that the examiner fails to identify the motivation in the Krzysik patent for modifying its teaching with the teachings of the Beerse patent: Beerse discloses the use of skin care compositions which, as recognized by the applicant, can be used in a diaper, Krzysik discloses the use of skin care compositions which can be used on the topsheet of the diaper, Krzysik also discloses the skin care composition have multiple components, and recognizes the addition of many other additional components (see Column 11). Beerse discloses a skin care composition, with such things as a thickening agent, which can include a polysaccharide, and a skin moisturizing agent such as a sterol. The motivation to combine does not come from simply adding a polysaccharide or a sterol, the modification to add these two components come from the addition of the skin moisturizing agent, which one of the preferred materials is a sterol, and the thickening agent, which one of the preferred material is the polysaccharide, into the lotion composition. As stated in the rejection, the motivation to combine comes from the fact that Beerse provides motivation for using a skin moisturizing agent as well as thickening agent, and Krzysik discloses that additional components can be added into the skin care composition.

With respect to applicant's arguments that there is not a reasonable expectation of success: As stated above, there is motivation to combine the Krzysik and Beerse references, and the examiner is not merely picking and choosing components from each one, but adding a

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moisturizing agent and thickening agent into the Krzysik composition, which recognizes the fact that additional components can be added. If all the active ingredients of the combination of Krzysik and Beerse are the same as the claimed invention, then it would inherently have the same effect as the claimed invention and therefore have a reasonable expectation of success. For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,


Jamisue Webb
May 14, 2003

Conferees

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